

AMENDED IN ASSEMBLY JANUARY 30, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 65

**Introduced by Assembly Members Achadjian and ~~John A. Pérez~~
*Lowenthal***

**(Principal coauthors: Assembly Members Bradford, ~~Lowenthal~~,
Gomez, Mitchell, and Williams)**

(Principal coauthor: Senator Hill)

(Coauthors: Assembly Members *Alejo, Ammiano, Atkins, Bigelow, Blumenfield, Buchanan, Ian Calderon, Chávez, Conway, Dahle, Dickinson, Donnelly, Frazier, Garcia, Gatto, Gordon, Gorell, Grove, Hagman, Hall, Harkey, Jones, Levine, Logue, Maienschein, Mansoor, Melendez, Morrell, Nazarian, Nestande, Olsen, Patterson, Perea, John A. Pérez, Quirk-Silva, Rendon, Skinner, Stone, Ting, Wagner, Waldron, Weber, and Wilk*)

(Coauthors: Senators *Anderson, Berryhill, Block, Cannella, Emmerson, Fuller, Gaines, Huff, Jackson, Knight, Lieu, Rubio, Walters, and Wyland*)

January 7, 2013

An act to amend Section 261 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 65, as amended, Achadjian. Crimes: rape.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator where the person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would additionally provide that this type of rape occurs where the person submits under the belief that the person committing the act is the victim's *domestic partner*, cohabitant, ~~fiancé, fiancée,~~ *fiancé, fiancée*, or someone with whom the victim has a dating relationship.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 261 of the Penal Code is amended to
2 read:

3 261. (a) Rape is an act of sexual intercourse accomplished
4 with a person not the spouse of the perpetrator, under any of the
5 following circumstances:

6 (1) Where a person is incapable, because of a mental disorder
7 or developmental or physical disability, of giving legal consent,
8 and this is known or reasonably should be known to the person
9 committing the act. Notwithstanding the existence of a
10 conservatorship pursuant to the provisions of the
11 Lanterman-Petris-Short Act (Part 1 (commencing with Section
12 5000) of Division 5 of the Welfare and Institutions Code), the
13 prosecuting attorney shall prove, as an element of the crime, that
14 a mental disorder or developmental or physical disability rendered
15 the alleged victim incapable of giving consent.

16 (2) Where it is accomplished against a person's will by means
17 of force, violence, duress, menace, or fear of immediate and
18 unlawful bodily injury on the person or another.

19 (3) Where a person is prevented from resisting by any
20 intoxicating or anesthetic substance, or any controlled substance,
21 and this condition was known, or reasonably should have been
22 known by the accused.

1 (4) Where a person is at the time unconscious of the nature of
2 the act, and this is known to the accused. As used in this paragraph,
3 “unconscious of the nature of the act” means incapable of resisting
4 because the victim meets any one of the following conditions:

5 (A) Was unconscious or asleep.

6 (B) Was not aware, knowing, perceiving, or cognizant that the
7 act occurred.

8 (C) Was not aware, knowing, perceiving, or cognizant of the
9 essential characteristics of the act due to the perpetrator’s fraud in
10 fact.

11 (D) Was not aware, knowing, perceiving, or cognizant of the
12 essential characteristics of the act due to the perpetrator’s fraudulent
13 representation that the sexual penetration served a professional
14 purpose when it served no professional purpose.

15 (5) Where a person submits under the belief that the person
16 committing the act is the victim’s spouse, *domestic partner*,
17 cohabitant, fiancé, fiancée, or someone with whom the victim has
18 a dating relationship, as defined in subdivision (f) of Section 243,
19 and this belief is induced by any artifice, pretense, or concealment
20 practiced by the accused, with intent to induce the belief.

21 (6) Where the act is accomplished against the victim’s will by
22 threatening to retaliate in the future against the victim or any other
23 person, and there is a reasonable possibility that the perpetrator
24 will execute the threat. As used in this paragraph, “threatening to
25 retaliate” means a threat to kidnap or falsely imprison, or to inflict
26 extreme pain, serious bodily injury, or death.

27 (7) Where the act is accomplished against the victim’s will by
28 threatening to use the authority of a public official to incarcerate,
29 arrest, or deport the victim or another, and the victim has a
30 reasonable belief that the perpetrator is a public official. As used
31 in this paragraph, “public official” means a person employed by
32 a governmental agency who has the authority, as part of that
33 position, to incarcerate, arrest, or deport another. The perpetrator
34 does not actually have to be a public official.

35 (b) As used in this section, “duress” means a direct or implied
36 threat of force, violence, danger, or retribution sufficient to coerce
37 a reasonable person of ordinary susceptibilities to perform an act
38 which otherwise would not have been performed, or acquiesce in
39 an act to which one otherwise would not have submitted. The total
40 circumstances, including the age of the victim, and his or her

1 relationship to the defendant, are factors to consider in appraising
2 the existence of duress.

3 (c) As used in this section, “menace” means any threat,
4 declaration, or act which shows an intention to inflict an injury
5 upon another.

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.